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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,620	12/04/2003	Gian Piero Spagnoli	Q78734	5750

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EXAMINER

WOOD, KIMBERLY T

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/726,620

Applicant(s)

SPAGNOLI, GIAN PIERO

Examiner

Kimberly T. Wood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7 and 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/4/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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This is an office action for serial number 10/726,620 entitled System for Fastening Cable Mesh Tray on Support Sections filed on December 4, 2003.

***Election/Restrictions***

Applicant's election without traverse of Species I in the reply filed on October 27, 2004 is acknowledged.

Claims 6, 7, and 20-24 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 27, 2004.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13-18 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a support section comprising a support surface for supporting the tray, does not reasonably provide enablement for a support

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section comprising a support surface for supporting the tray and a support bracket comprising an upper support surface for supporting a cable tray. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The applicant has disclosed within the specification that the support section is the support bracket therefore the claim is enabling as well as indefinite. The specification only discloses one support having an upper support surface including a pair of lateral walls connected to the longitudinal edges of said surface.

The claims have been rejected under 35 U.S.C. 112 for the above reasons. Please note that the Examiner may not have pointed out each and every example of indefiniteness. The applicant is required to review all the claim language to make sure the claimed invention is clear and definite.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and

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distinctly claim the subject matter which applicant regards as the invention.

Claim 19 recites the limitation "the transverse section plane" in line 9. There is insufficient antecedent basis for this limitation in the claim.

The claims have been rejected under 35 U.S.C. 112 for the above reasons. Please note that the Examiner may not have pointed out each and every example of indefiniteness. The applicant is required to review all the claim language to make sure the claimed invention is clear and definite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of

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section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-5, 8-12, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith 3,219,302. Smith discloses at least one retaining member (Figure 5) being wire bent in a U-shaped (25) having coupling ends consisting of parallel lengths of wire shaped into a V shape (14, and 12).

Claims 1-5, 8-12, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Tormo 2,634,930. Tormo discloses at least one retaining member (Figures 3 and 4) being wire bent in a U-shaped (30) having coupling ends consisting of parallel lengths of wire shaped into a V shape (38 and 33 and 36).

Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Durin et al. (Durin) 6,082,690. Durin

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discloses a support bracket (1) comprising an upper support surface (20) and a pair of lateral walls (30 and 40) with a plurality of apertures (24).

Claims 13 and 14 rejected under 35 U.S.C. 102(e) as being anticipated by MacDonald 6,817,147. MacDonald discloses a support bracket (3) comprising an upper support surface (between 5) and a pair of lateral walls (5) with a plurality of apertures (see figure 2).

Claims 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hubbard 4,957,251. Hubbard discloses a support bracket (10)) comprising an upper support surface (22) and a pair of lateral walls (24 and 26) with a plurality of apertures (see figure 6).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hubbard 4,957,251. Hubbard discloses all of the limitations of the claimed invention except for the apertures having corrugated contour, a toothed profile, or an undulating profile. Hemphill discloses an aperture having a corrugated contour, a toothed profile, or an undulating profile (b and c). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Hubbard to have included the corrugated contour, a toothed profile, or an undulating profile to the apertures as taught by Hemphill for the purpose of preventing casual lateral movement or displacement. The applicant has not positively claimed the combination of the retaining member, the support bracket/support section, and the tray therefore the rejections have been based on each subcombination only.

Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over (Durin) 6,082,690, as discussed above, in view of Hemphill 551,032. Durin discloses all of the limitations of the claimed invention except for the elongated oval apertures having corrugated contour, a toothed profile, or an undulating profile. It would have been an obvious matter of design choice to have made the apertures an elongated oval shape, since such a modification would have involved a mere change in the shape of a



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component. A change in shape is generally recognized as being within the level of ordinary skill in the art since the applicant has not shown how the chosen shape is critical.

Hemphill discloses an aperture having a corrugated contour, a toothed profile, or an undulating profile (b and c). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Durin to have included the corrugated contour, a toothed profile, or an undulating profile to the apertures as taught by Hemphill for the purpose of preventing casual lateral movement or displacement.

Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacDonald 6,817,147, as discussed above, in view of Hemphill 551,032. MacDonald discloses all of the limitations of the claimed invention except for the elongated oval apertures having corrugated contour, a toothed profile, or an undulating profile. It would have been an obvious matter of design choice to have made the apertures an elongated oval shape, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art since the applicant has not shown how the chosen shape is critical. Hemphill discloses an aperture having a corrugated contour, a toothed profile, or an undulating profile

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(b and c). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified MacDonald to have included the corrugated contour, a toothed profile, or an undulating profile to the apertures as taught by Hemphill for the purpose of preventing casual lateral movement or displacement.

### Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

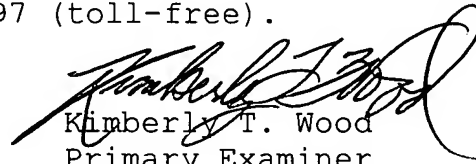
The prior art discloses conventional retaining members and support brackets.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly T. Wood whose telephone number is 703-308-0539. The examiner can normally be reached on Monday-Thursday 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kimberly T. Wood  
Primary Examiner  
Art Unit 3632

January 24, 2005